Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Pilgrim Communications, Inc.	)	File Number: EB-01-DV-300
	)	
Licensee of Station KWYD(AM)	)	NAL/Acct. No. 200332800005
Colorado Springs, Colorado	)	FRN 0006-1472-19
Facility ID # 51816	)	

FORFEITURE ORDER

Adopted: May 17, 2004 **Released: May 19, 2004**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of nineteen thousand dollars ($19,000) to Pilgrim Communications, Inc. ("Pilgrim"), licensee of AM radio station KWYD in Colorado Springs, Colorado, for willful and repeated violation of Sections 11.35, 73.1125(a), 73.1560(a) and 73.1745(a) of the Commission's Rules ("Rules").[1] The noted violations involve Pilgrim's failure to have fully operational Emergency Alert System ("EAS") equipment, its failure to maintain the requisite main studio presence, its failure to reduce KWYD's power at sunset to the nighttime level required by the station authorization, its failure to increase KWYD's power at sunrise to the daytime level required by the station authorization, its exceeding KWYD's authorized nighttime power level and its operation with power below the authorized daytime power level.

2. On November 20, 2002, the Commission's Denver, Colorado, Field Office ("Denver Office") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*") to Pilgrim for a forfeiture in the amount of nineteen thousand dollars ($19,000).[2] Pilgrim responded to the *NAL* on January 21, 2003, and filed a supplementary response on February 20, 2003.

II. BACKGROUND

3. Radio station KWYD is authorized to operate with 10,000 watts of power during daytime hours and 67 watts between sunset and sunrise on frequency 1580 kHz. On August 21, 2001, an agent from the Denver Office monitored KWYD and took numerous field strength measurements at locations near the KWYD transmitter between 7:10 p.m. to 9:00 p.m. MDT. According to its station authorization, KWYD should have switched from daytime to nighttime power at 8:00 p.m. The agent observed no change in the field strength from 8:00 p.m. to 9:00 p.m. The agent concluded, based on his observations

[1] 47 C.F.R. §§ 11.35, 73.1125(a), 73.1560(a) and 73.1745(a).

[2] *Notice of Apparent Liability for Forfeiture,* NAL/Acct. No. 200332800005 (Enf. Bur., Denver Office, released November 20, 2002).

and experience, that KWYD's power appeared to remain at approximately the station's authorized daytime level, 10,000 watts, throughout the monitoring period (7:10 p.m. to 9:00 p.m) and did not decrease at 8:00 pm.

4. On August 22, 2001, from 5:40 a.m. to 9:30 a.m. MDT, the agent again conducted numerous field strength measurements near KWYD's transmitter. According to its station authorization, KWYD should have switched from nighttime to daytime power at 6:15 a.m. The agent observed no change in the field strength at that time and also observed that KWYD's field strength remained at approximately the same level throughout the monitoring period. After the monitoring, the agent inspected the station and observed that KWYD was operating with a power of approximately 225 watts.[3] Specifically, KWYD was operating with about 336% of the authorized nighttime power level from 5:40 a.m. to 6:15 a.m. and with about 2.25% of the authorized daytime power level from 6:15 a.m. to 9:30 a.m.

5. On the morning of August 22, 2001, when the agent initially attempted to inspect the KWYD main studio at 490 Willow Springs Road, Fountain, Colorado, the main studio was closed and unstaffed. A sign on the door provided the name and telephone number of the general manager, but indicated that, as of July 15, 2001, the studio was open by appointment only. After contacting the general manager, the agent was able to complete the inspection. During the inspection of KWYD, the agent found that, although EAS equipment was installed, the EAS system was not fully operational because it was not properly programmed. Following the inspection and after KWYD's power had been raised to 10,000 watts, the agent took a new field strength reading which confirmed that KWYD had been operating with power of approximately 10,000 watts on August 21, 2001.

6. On December 12, 2001, the Denver Office issued an NOV to Pilgrim for the violations discovered on August 21 and 22, 2001, at station KWYD. In its response, Pilgrim stated that its remote control system, which controls KWYD's power level, was not programmed after KWYD's studio relocation in March 2001 but has now been programmed. In addition, Pilgrim stated that the KWYD's EAS equipment was also not programmed following the studio relocation but has now been programmed. Pilgrim also stated that it has hired a person to staff its main studio between 9:00 a.m. and 5:00 p.m., Monday through Friday.

7. On November 20, 2002, the Denver Office issued a *NAL* to Pilgrim for a forfeiture in the amount of nineteen thousand dollars ($19,000). In its January 21, 2003, response to the *NAL*, Pilgrim states that it has replaced KWYD's EAS system; that the EAS system has been programmed and has a properly trained operator; that the station is required to reduce power at night and daily manual checks have been instituted to assure that KWYD reduces its power at the proper times; and that KWYD's main studio is staffed from 9:00 a.m. to 5:00 p.m. Monday through Friday "by a manager and a full time staff person." Pilgrim requested cancellation on the basis of its correction of the violations and its inability to pay the proposed monetary forfeiture. Pilgrim filed a supplementary response on February 20, 2003, containing copies of its 1998, 1999, 2000 and 2001 federal income tax returns.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),[4] Section 1.80 of the Rules,[5] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the*

[3] Apparently, at some time between 9:00 p.m. on August 21, 2001, and 5:40 a.m. on August 22, 2001, KWYD's power was reduced from about 10,00 watts to about 225 watts.

[4] 47 U.S.C. § 503(b).

[5] 47 C.F.R. § 1.80.

Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that the Commission, in examining Pilgrim's response, take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.[6]

9. Section 11.35(a) of the Rules requires that broadcast stations have fully operational EAS equipment. The FCC agent's investigation establishes that Pilgrim did not have fully operational EAS equipment at its station between March 2001 and August 22, 2001. Further, Pilgrim does not dispute that KWYD did not have fully operational EAS equipment during this time. Based on the facts before us, we find that Pilgrim willfully[7] and repeatedly[8] violated Section 11.35(a) of the Rules.

10. Section 73.1560(a) of the Rules provides that AM stations must be maintained as near as practicable to the authorized antenna input power. Section 73.1745(a) of the Rules states, in pertinent part, that no broadcast station shall operate with power other than that specified and made a part of the license unless otherwise provided in Part 73 of the Rules. We find that Pilgrim did not reduce KWYD's power to the authorized nighttime level at sunset on August 21, 2001; and did not increase KWYD's power to the authorized daytime level at sunrise on August 22, 2001 -- in willful and repeated violation of Sections 73.1560(a) and 73.1745(a) of the Rules.

11. Section 73.1125(a) of the Rules requires that every broadcast station licensee maintain a main studio for the station. To serve the needs and interests of the residents of the station's community of license, the licensee must maintain a full-time staff and managerial presence during normal business hours.[9] We conclude that, from July 15 to August 22, 2001, Pilgrim did not have a full time management and staff presence during normal business hours at the main studio of station KWYD, in willful and repeated violation of Section 73.1125(a) of the Rules.

12. No mitigation is warranted on the basis of Pilgrim's correction of the violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."[10]

13. Finally, Pilgrim argues that, if the proposed $19,000 forfeiture is imposed, it will be unable to pay that amount. In support of its financial hardship claim, Pilgrim submits copies of its 1998, 1999, 2000 and 2001 federal income tax returns.[11] The Commission has determined that, in general, a licensee's

---

[6] 47 U.S.C. § 503(b)(2)(D).

[7] Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' … means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act …." *See Southern California Broadcasting Co*., 6 FCC Rcd 4387 (1991).

[8] As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. *The Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

[9] *Jones Eastern of the Outer Banks, Inc.,* 6 FCC Rcd 3615, 3616 and n.2 (1992), *clarified*, 7 FCC Rcd 6800 (1992).

[10] *See also Callais Cablevision, Inc.,* 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc*., 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp*., 3 FCC 2d 699, 700 (1966).

[11] Since we consider only the three most recent federal income tax returns, we are not considering the 1998 return.

gross revenues are the best indicator of its ability to pay a forfeiture.[12] After reviewing the financial data submitted, we find that the proposed monetary forfeiture should not be cancelled or reduced.[13]

14. We have examined Pilgrim's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Pilgrim willfully and repeatedly violated Sections 11.35, 73.1125(a), 73.1560(a) and 73.1745(a) of the Rules and that neither cancellation nor reduction of the proposed $19,000 monetary forfeiture is warranted.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,[14] Pilgrim Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nineteen thousand dollars ($19,000) for willful and repeated violation of Sections 11.35, 73.1125(a), 73.1560(a) and 73.1745(a) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[15] Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332800005 and FRN 0006-1472-19. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.[16]

17. **IT IS FURTHER ORDERED** That a copy of this *Forfeiture Order* shall be sent by certified mail, return receipt requested, to Pilgrim's counsel, Marnie K. Sarver, Esq., Wiley, Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

---

[12] *See PJB Communications of Virginia, Inc.,* 7 FCC Rcd 2088, 2089 (1992).

[13] *Id*. at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp*., 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues). We have reviewed Pilgrim's financial data in this case and another case involving Pilgrim simultaneously and have determined it is able to pay both forfeitures. *Pilgrim Communications, Inc.,* DA 04-xxxx (Enf. Bur., released mm/dd/04).

[14] 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[15] 47 U.S.C. § 504(a).

[16] See 47 C.F.R. § 1.1914.